



STATE BOARD OF EQUALIZATION

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E. L. SORENSEN, JR.
Executive Director

April 30, 1999

Dear Mr. :

This is in response to your letter dated April 5, 1999, addressed to Steve Kamp of Board of Equalization Member John Chiang's office, requesting an opinion on whether partnership real property in which you as a partner own an interest would be reassessed for property tax purposes if you proceed with your plan to acquire the other partner's 50% interest in the partnership. For the reasons set forth below, it is our opinion that such a transfer of the partnership interest you describe would constitute a change in control of the partnership, resulting in a change in ownership of the partnership's property and a reassessment of the entirety of the property.

You advise that you own a 50% partnership interest in a partnership that owns an apartment building in Los Angeles. You contemplate buying your family member relative's 50% partnership interest in the partnership. The partnership would not be conveying the property; however, in order to secure your position and eliminate any dispute as to who owns the property in the future (*i. e.*, the existing "partnership" of which you would have a 100% interest), you wish to record a quit claim deed given to you by your partner. You ask whether this transaction would result in a reappraisal of the property.

Property will generally be reappraised for property tax purposes when there is a change in ownership. Cal. Const. Art. XIII A, sec. 2, subd. (a). The Legislature has defined what constitutes a change in ownership at Revenue and Taxation Code sections 60 et. seq. Subdivision (c)(1) of Section 64 provides in relevant part:

(c)(1) When . . . any . . . person . . . obtains a majority ownership interest in any partnership, . . . through the purchase or transfer of . . . partnership, . . . interest . . . through which control or a majority ownership interest is obtained, the purchase or transfer of that . . . interest shall be a change of ownership of the real property owned by the . . . partnership, . . . in which the controlling interest is obtained. . . .

April 30, 1999

Presently no partner owns more than 50 percent of the partnership interests. Were the proposed transfer to occur, you would obtain a majority ownership interest. Therefore, pursuant to subdivision (c)(1) of section 64, there would be a change in control of the partnership, resulting in a change in ownership of the real property owned by the partnership and a reassessment of that property for property tax purposes.¹

You note in your letter that you desire the opinion as to the *local assessor's office* position on reassessing the property. While we are pleased to offer our opinion on this matter, our analysis and opinion are not binding on the county assessor. Therefore, you may wish to discuss this matter with the Los Angeles County Assessor's office at 500 West Temple Street, Los Angeles, CA 90012-2770 to obtain the assessor's view on the change in ownership and reassessment implications of the transaction you propose.

If you have any questions, please do not hesitate to call me at (916) 324-2655.

Sincerely,



Daniel G. Nauman
Tax Counsel

DGN:jd

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cc: Honorable John Chaing
Honorable Kenneth P. Hahn,
Los Angeles County Assessor
Steven M. Kamp, Esq.
Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70
Timothy W. Boyer, Esq.

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MAY - 3 1999

DEPT. OF REVENUE
TAX DIVISION

¹ We understand from your letter that the partnership owns the real property, and that you and your relative each own a 50% interest in the partnership. If this is not correct and, for example, even though you have a partnership agreement, you and your relative each own a 50% interest in the *real property*, our analysis would be different.



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January 11, 1989

Dennis D. Law
Attorney at Law
Andre, Morris, & Buttery
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Dear Mr. Law:

This is in response to your request that we consider additional arguments pertaining to the Oakcrest Associates partnership in order to determine if there has been a change in control of the partnership. The facts as outlined in the documents which have been submitted to us are as follows:

On or about September 25, 1978, Edwin Dorfman and Ray Hundertmark formed the Oakcrest Associates partnership in which they each received a 50 percent interest. The purpose of the partnership was to acquire, develop, subdivide and sell real property. On July 4, 1982, Ray Hundertmark died. His daughter, Kathryn Hundertmark, was his sole heir. She was also appointed Executrix of Mr. Hundertmark's estate.

On July 30, 1983, Kathryn Hundertmark and Edwin Dorfman entered into an amendment of the partnership agreement of Oakcrest Associates. The parties agreed that the Oakcrest partnership should be continued in order to develop and market the real property owned by the partnership.

On December 31, 1983, Kathryn Hundertmark entered into a redemption agreement with Oakcrest Associates. The redemption agreement recites that the interest of Ray Hundertmark has been distributed to Kathryn Hundertmark and that she and Edwin Dorfman have amended the partnership agreement and elected to continue the partnership. The redemption agreement further states that Kathryn Hundertmark is now desirous of disposing of her partnership interest in Oakcrest and at paragraph 1 states:

- "1. KATHRYN HUNDERTMARK shall and does hereby transfer to OAKCREST all her right, title and interest in the partnership."

The agreement goes on to state the specific consideration that Oakcrest shall pay to Kathryn Hundertmark as consideration for the transfer of her partnership interest. (Paragraphs 2, 3 and 4.)

The assessor reappraised the properties owned by the partnership as of December 31, 1983, on the basis that on that date, control of the partnership passed to Edwin Dorfman. We wrote a letter dated March 31, 1988, in which we agreed with the conclusion that a change in ownership had occurred.

In a letter to Richard Ochsner dated August 17, 1988, you point out that the redemption was a transaction between Kathryn Hundertmark and the partnership, not a transfer to Edwin Dorfman, the surviving partner. Under the federal income tax statutes, a partnership continues to exist so long as the partnership continues to pay liquidating payments to a prior partner or to a successor of a prior partner. (Treas. Regs. §§ 1.736-1(a)(6) and 1.708-1(b)(1)(ii).) Based on these regulations, you contend in your letter that the law, both as to property taxation and to income taxation, is that "[w]here there is a transfer of a partnership interest by way of redemption, from one partner with a 50 percent interest or less, and the partnership continues to exist for purposes of making liquidating payments to the redeeming partner, there is neither a transfer of a majority interest nor a transfer of a control within the meaning of Section 64(c), so long as the partnership continues the dissolution process by making liquidating payments to the redeeming partner." You ask us to consider this argument.

Revenue and Taxation Code section 64(c) provides in pertinent part as follows:

When a corporation, partnership, other legal entity or any other person . . . obtains a majority ownership interest in any partnership . . . through the purchase or transfer of . . . partnership interest . . . such purchase or transfer shall be a change of ownership of property owned by the . . . partnership . . . in which the controlling interest is obtained.

Therefore, for property tax purposes, a change in ownership occurs whenever a person "obtains a majority ownership interest" in a partnership. It is not a requirement for property tax purposes that the transfer

of the partnership interest be to Edwin Dorfman. By the very terms of section 64(c), it is only necessary that he "obtain a majority interest" in the partnership. Before the redemption, Mr. Dorfman owned 50 percent of the Oakcrest partnership and Ms. Hundertmark owned 50 percent. The redemption agreement states that Ms. Hundertmark transfers all of her interest in the partnership. That leaves Mr. Dorfman as the sole remaining partner. By definition, he has obtained a majority interest in the partnership because there is no other partner.

You cite Treasury Regulations section 1.736-1(a)(6) and section 1.708-1(b)(1)(ii) as authority for the proposition that a person remains a partner so long as that person receives payments in liquidation of his or her partnership interest. This proposition is correct for federal income tax purposes, but not for property tax. The very terms of the regulations distinguish them from the property tax statutes. Treasury Regulation section 1.736-1(a)(ii) provides:

"Section 736 and this section apply only to payments made to a retiring partner or to a deceased partner's successor in interest in liquidation of such partner's entire interest in the partnership. See section 761(d). Section 736 and this section do not apply if the estate or other successor in interest of a deceased partner continues as a partner in its own right under local law. . . . A partner retires when he ceases to be a partner under local law. However, for the purposes of subchapter K, chapter 1 of the Code, a retired partner or a deceased partner's successor will be treated as a partner until his interest in the partnership has been completely liquidated." (Emphasis added.)

Thus under Regulation 1.736-1(a)(ii), even though a partner is no longer a partner under local law, he continues to be treated as a partner under subchapter K of the Internal Revenue Code. In fact, Internal Revenue Code section 736 will not apply if a successor in interest of a deceased partner continues as a partner in his or her own right. Therefore, the conclusions you desire under Internal Revenue Code section 736 and Revenue and Taxation Code section 64(c) are not consistent. For Edwin Dorfman not to have obtained a majority ownership interest in Oakcrest Associates for the purposes of Revenue and Taxation Code section 64(c), Kathryn Hundertmark must still be a partner. But if she

CHANGE IN OWNERSHIP (Contd.)

220.0507 Partnership. A transfer of real property by partnership A to partnership B which is owned 50 percent by A and 50 percent by Corporation X constitutes a 100 percent change in the ownership of the property transferred. Because of the legal entity theory adopted by the Legislature, the 50 percent ownership held by partnership A in partnership B does not limit reappraisal to 50 percent of the property. The transfer does not result merely in a change in the manner of holding title and proportional ownership does not remain the same after the transfer.

Partnership B now owns and controls the property. Had partnership A retained a 50 percent interest in the property, it could control that interest. As the property is now owned by partnership B, it must be used only for B's purposes. The fact that A could have transferred a 50 percent interest and thereby limited reappraisal to the interest transferred is immaterial. A chose to transfer total ownership of the property and must accept the tax consequences of that decision. C 2/18/86.